

## TRADITION AND AUTHENTICITY: THE YORTA YORTA CASE

### Overview

On the 12 December 2002, the High Court handed down its decision *Members of the Yorta Yorta Aboriginal Community v State of Victoria and Others*, relating to the native title claim made by the Yorta Yorta peoples to land and waters covering 2,000 square kilometres along and around the Murray and Goulburn Rivers. The Yorta Yorta peoples sought recognition that they are the Indigenous peoples belonging, by tradition, to that country. The High Court appeal was dismissed by a 5/2 majority.

### Legislation

*Native Title Act 1993 (Cth)*

### Cases

*Members of the Yorta Yorta Aboriginal Community v Victoria* [2002] HCA 58 (12 December 2002) – High Court Decision

*Members of the Yorta Yorta Aboriginal Community v State of Victoria* (Including Corrigendum dated 21 March 21 2001) [2001] FCA 45 (8 February 2001) – Full Federal Court Decision

*Members of the Yorta Yorta Aboriginal Community v The State of Victoria* [1998] 1606 (18 December 1998) – Federal Court Decision

### Background

[Background to the case \(pdf\)](#)

### Comment

[Comment \(pdf\)](#) on the High Court decision by Dr Lisa Strelein, Manager, NTRU.

### Media

[Media Release from the Aboriginal and Torres Strait Islander Commission](#)

[Media Release from the Attorney-General's Department](#)

[Media Release from the National Native Title Tribunal](#)

[Media Release from Senator Aden Ridgeway](#)

[Media Release from Australians for Native Title and Reconciliation](#)

### Resources

Anker, Kirsten 2004. 'Law in the present tense: Tradition and cultural continuity in Members of the Yorta Yorta Aboriginal Community v Victoria', *Melbourne University Law Review*, Vol. 28, No. 1, pp 1-27.

Atkinson, W. 2001. 'Not one iota of land justice: reflections on the Yorta Yorta native title claim 1994-2001', *Indigenous Law Bulletin*, Vol. 5, No. 6.

Bartlett, Richard 2003. 'An obsession with traditional laws and customs creates difficulty establishing native title claims in the south: Yorta Yorta', *University of Western Australia Law Review*, Vol. 31, No. 1, pp 35-46.

Basten, John 2002. 'The content of native title', *Australian Mining and Petroleum Law Journal*, Vol. 21, No. 3, December, pp 225-235.

Basten, John 2003. '**Beyond Yorta Yorta**', *Land, Rights, Laws: Issues of Native Title*, Vol. 2, No. 24, October.

Case, N. 1999. '**Tide of history or tsunami? The Members of the Yorta Yorta Aboriginal Community v The State of Victoria**. Federal Court of Australia', *Indigenous Law Bulletin*, Vol. 4, No. 17.

Clarke, Jennifer. '**Next time someone tells you native title has not lived up to expectations, tell them about its "foster" family**', Faculty of Law, Australian National University.

Costenoble, Karin 2003. 'Defining native title: What is a normative system?', *Native Title News*, Vol. 6 No. 3, July, pp 30-34.

Henriss-Anderssen, Diana 2003. 'Case note: Members of the Yorta Yorta Community v Victoria [2002] HCA 58 (12 December 2000)', *James Cook University Law Review*, Vol. 9, No. 1, pp 331-341.

Kerruish, V. and C. Perrin. 'Awash in Colonialism', *Alternative Law Journal*, Vol. 24, No. 1.

Lavery, Daniel 2003. '**A greater sense of tradition: The implications of the normative system principles in Yorta Yorta for native title determination applications**', *Murdoch University Electronic Journal of Law*, Vol. 10, No. 4, December.

Maddock, K. 1998. 'Anthropologists in native title claims', *Anthropological Forum*, Vol. VIII, 1 and 2.

McIntyre, Greg 2003. 'Native title rights after Yorta Yorta', *James Cook University Law Review*, Vol. 9, No. 1, pp 268-330.

McIntyre, Greg 2003. '**Native title rights after Yorta Yorta**'. Paper presented at the *Native Title Conference 2003: Native Title on the Ground*, Alice Springs 3-5 June.

Morgan, Monica 2002. 'The Yorta Yorta experience'. Paper presented at *The Native Title Conference 2002: Outcomes and Possibilities*, Geraldton, Western Australia, 5 September.

Morgan, M. 1994. 'Traditional land use, and accommodating competing interests', in *Proof and management of native title: Summary of proceedings of a workshop conducted by the Native Titles Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies at University House, Canberra 31 January - 1 February 1994*, NTRU, AIATSIS, Canberra.

Murray, T. 2000. 'Conjectural histories: Some archaeological and historical consequences of Indigenous dispossession in Australia', in *Native Title and the Transformation of Archaeology in the Postcolonial World*, Ian Lilley (ed), *Oceania Monograph*, 50.

Ritter, D. 2000. 'Note on Yorta Yorta Aboriginal Community v Victoria', *Native Title News*, No. 5, pp 2-5.

Seidel, P. 1998. 'The Yorta Yorta native title determination application', *Working with the Native Title Act: Alternatives to the adversarial method. Proceedings from a workshop held 4-5 June 1997*, NTRU, AIATSIS, Canberra.

Strelein, Lisa 2003. 'Members of the Yorta Yorta Aboriginal Community v Victoria - Comment', *Land, Rights, Laws: Issues of Native Title*, Vol. 2, No. 21, February.

Strelein, Lisa 2000. 'The "courts of the conqueror": Judicial independence and the assertion of Indigenous peoples' claims', *Australian Indigenous Law Reporter*, Vol. 5, No. 2, pp 1-23.

Weiner, James 2002. 'Diaspora, Materialism, Tradition: Anthropological issues in the recent High Court Appeal of the Yorta Yorta', *Land, Rights, Laws: Issues of Native Title*, Vol. 2, No. 18.

Young, S. 2001. 'The trouble with "tradition": Native title and the Yorta Yorta decision', *University of Western Australia Law Review*, Vol. 30, No. 1, May.

Young, D. and T. Denholder 2001. 'Proof of native title: Yorta Yorta.' *Australian Mining and Petroleum Law Journal*, Vol. 20, No. 1, April.